



Rights Information & Advocacy Centre

UNDERSTANDING NDIS & REVIEWS

We would like to acknowledge all Aboriginal and Torres Strait Islander peoples, their Elders and Respected Persons (past, present and emerging) as the Traditional Custodians of the land on which we meet today.

OVERVIEW

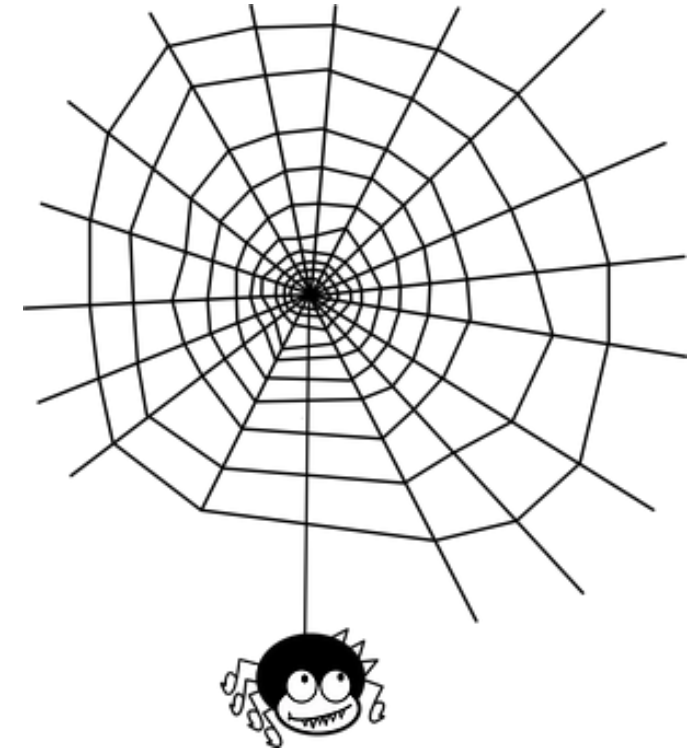
1. Why are we here?
2. Access to NDIS
3. Not Eligible for NDIS?
4. Your NDIS Plan
5. Reasonable and Necessary Criteria
6. Internal Reviews and Appeals
7. Evidence Tips
8. External Review Appeal
9. Plan Review Request
10. Complaints
11. How can RIAC Support

1. WHY ARE WE HERE?

- To build the capacity of participants, carers and the workforce.
- Increasing demand for Internal Review requests

(Also known as Review of Reviewable Decisions (RORDs))

- To untangle the web of the NDIS review process.
- Learn how Advocacy can support you or your organisation.
- Tips and tools to self-advocate
- Legend: Important Tribunal cases = **Orange** Important sections of NDIS Act (the Law) = **Purple**
- **Current NDIS Act and processes review:** Changes coming in July 2020 (stay tuned)





KEY WORDS

- **National Disability Insurance Scheme (NDIS)** : social welfare scheme of the Australian Government that funds costs associated with disability
- **National Disability Insurance Agency (NDIA)**: government organisation that runs the NDIS
- **NDIA Planner/Delegate**: employed by the NDIA to build participant plans and make decisions for the NDIA
- **Local Area Coordinator (LAC) eg. Latrobe Community Health**
 - Partnered with the NDIA to deliver the NDIS for participants 7 years and older
 - LAC is a participant's main point of contact for NDIS matters, gathers information and helps to understand and implement the NDIS plan
 - Links to community and mainstream services for non-NDIS participants and NDIS participants
- **Early Childhood Early Intervention (ECEI) eg. Barwon Child Youth & Family**
 - Partnered with the NDIA to deliver the NDIS to participants 0-6 years who have a developmental delay or disability
- **Internal Review**: section 100 NDIS Act 2013 also known as a Review of a Reviewable Decision (RORD) first step in review process of an NDIA decision
- **External Review**: independent review process for an unfavorable NDIA Internal Review decision facilitated by the AAT
- **Administrative Appeals Tribunal (AAT)**: provides independent review of decisions made by the NDIA

THE NDIS PLANNING MEETING – A QUICK VIDEO!

[CLICK HERE!](#)



TIP: NDIS Planning Booklet from Endeavour Foundation – [HERE](#)

2. ACCESS TO NDIS



- Around 4.3 million Australians who have a disability. The NDIS will provide support for about 460,000 people ...that's only 10%
- First consider – what do I want the NDIS to support me with? Discuss with community service supports to make sure the NDIS is the right support for you?
- You can apply as many times as you like
- If you are wanting access to the NDIS you must meet the NDIS eligibility criteria OR meet [List A](#) conditions for immediate access. Conditions in list [B](#) require further evidence.

Disability eligibility criteria has 2 main tests s.24 NDIS Act

1. ***Permanent or likely to be permanent impairment***
2. *The impairment results in **substantially reduced functional capacity/psychosocial functioning** to undertake, one or more of the following activities: communication/social interaction/ learning/ mobility/self care/ self management*

S. 25 *Early intervention – **Permanent or likely to be permanent** disability that would benefit from early intervention OR a child aged 0-6 years with significant developmental delay*

2. ACCESS TO NDIS



What does Permanent mean?

- To prove a disability is permanent (or likely to be permanent) the evidence must include the following:
 - What assessments/treatments have been performed, or are currently being performed?
 - Are further tests or treatments required?
 - Are there any other available and appropriate treatments that are likely to improve the impairment?

NOTE: An impairment/s may be categorised as permanent and continue to be treated *eg. Someone with chronic depression for 20 years can benefit from treatment to manage symptoms however the condition remains permanent.*

If a “health” condition has caused a permanent impairment this **may** become an NDIS recognised disability

Example: Diabetes: health condition which may lead to a disability if there is an amputation

2. ACCESS TO NDIS

What does “Substantial” Impact on Function/Psychosocial function mean?

Evidence needs to show a substantially reduced functional capacity to undertake any of the following as a result of impairments:

- Communication/ social interaction / learning / mobility /self-care/ self-management

Substantial: A lot of difficulty to participate in activities of daily living

- (a) needs assistive technology, equipment or home modifications; or
- (b) usually requires assistance (including physical assistance, guidance, supervision or prompting)
- (c) unable to participate even with assistive technology, equipment, home modifications or assistance from another person.





3. NOT ELIGIBLE FOR NDIS ACCESS

Engage with an NDIS Community Based Partner

- Local Area Coordinator (LAC)
- Early Childhood Early Intervention (ECEI)
- These services can assist to link you with other services including community services, local councils, hospitals, libraries, health centres, community groups, charities, community centres.

4. YOUR NDIS PLAN

Planning information is gathered by either:

- NDIA Planner/Delegate (complex cases)
- Local Area Coordinator (LAC) (above 7)
- Early Childhood Early Intervention (ECEI) (0-6 years)



Final approval goes to an NDIA “Delegate”

Depending on complexity your plan may go to different specialty teams for approval.



4. YOUR NDIS PLAN



- Your NDIS plan will provide you with supports that are **directly** related to your disability

Eg. to participate in day program activities AND you may receive transport funding to attend the day program.



- Once you are a participant your overall disability support needs should be considered

*Eg. if you gain access for a psychosocial disability but also have epilepsy you may receive funding for epilepsy related support needs **BUT** ... support requests must meet the **Reasonable and Necessary criteria** (see next slide)*

NOTE: “Primary” and “Secondary” disabilities are not part of NDIS legislation.
All your disabilities are relevant!

5. REASONABLE AND NECESSARY CRITERIA

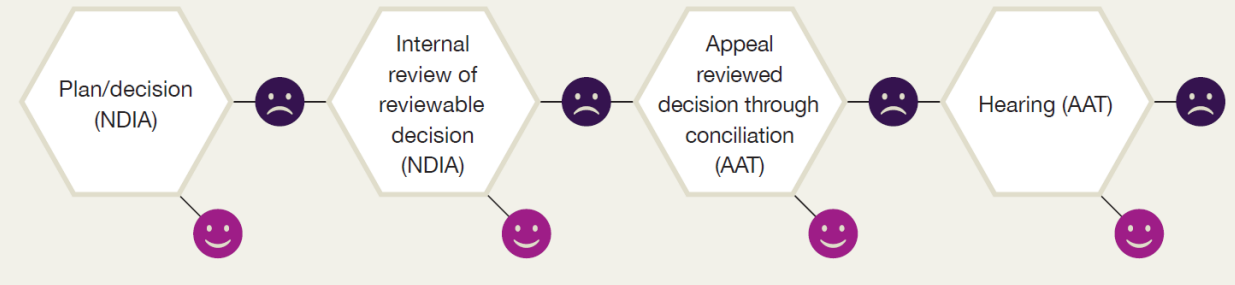
S. 34 NDIS Act 2013

1. Does it support you to achieve your NDIS Plan goals?
2. Does it assist your social and economic participation?
3. Is it value for money?
4. Is it effective and beneficial and has regard to current good practice?
5. Does it takes into account what is reasonably expected for families, carers, informal networks and the community to provide?
6. Is the support most appropriately funded through other systems? eg health, education, child protection etc.



6. INTERNAL REVIEWS AND APPEALS

Quick reference summary process



Process & Timeframes:

1. Internal review (also known as Review of a Reviewable Decision) – Within 3 months of receiving decision from NDIA (outside 3 months can request an exemption to NDIA)
2. Internal review decision from NDIA – no timeframe
3. Appeal to Tribunal – within 28 days of receiving a decision from NDIA (outside 28 days can request an exemption)
4. Tribunal process – has various stages and no timeframes

6. INTERNAL REVIEWS AND APPEALS

a. REVIEW: ACCESS

Option A – *consider re-applying with further evidence*

- You can re-apply as many times as you like
 - check the evidence you submitted with a support person
 - once you re-apply, the NDIS will provide an outcome within 3 weeks, you can appeal if you have no response within 3 weeks

Option B – *Submit Internal Review Application (also call a RORD)*

- Review the internal review application with a support person
- Once submitted there is no timeframe which the NDIS has to respond (this is why it may be better to do a new application (option A) if you have new evidence.)



6. INTERNAL REVIEWS AND APPEALS

b. REVIEW: SUPPORTS

- The most common Internal Reviews are for NDIS support needs
- An Internal Review can be requested in writing/email/verbally within 3 months of the decision
- We recommend the best option is to submit a Review of a Reviewable Decision (RORD) Form with any additional evidence
- Complete the form in as much detail as possible to explain why the support meets the REASONABLE & NECESSARY criteria

7. EVIDENCE TIPS

Note: these are recommendations only and may assist to provide the relevant information to support your request for NDIA supports. To help decide what is best for your request you can speak to a support person or an Advocate.

| REASONABLE & NECESSARY REQUIREMENT | EVIDENCE |
|--|--|
| Does it support you to achieve your NDIS Plan Goals? | Personal statement / Statement from formal or informal support |
| Does it assist your social and economic participation | Personal statement / Statement from formal or informal support |
| Value for money | <p>Report from formal support (and a personal statement)</p> <ul style="list-style-type: none"> • Information of alternative supports that may be more cost effective but have not been successful. • Evidence that support will substantially improve life stage outcomes and be of long term benefit • Evidence that support is likely to reduce costs in the long term • Are costs comparable to cost of supports of same kind in your area? • Will support increase independence and reduce needs for other supports? • If equipment or modifications – have cheaper alternatives been explored? |

7. EVIDENCE TIPS

| REASONABLE & NECESSARY REQUIREMENT | EVIDENCE |
|--|---|
| Effective, beneficial and current good practice | <ul style="list-style-type: none"> • Personal statement/ carer statement explaining the benefits of support • Evidence from expert, consider published literature and specialist opinions of current good practice |
| Expectation of families/carers/informal supports/community | <ul style="list-style-type: none"> • include information on the limitations of informal/community/family support • If it is a child explain how their needs are substantially greater than those of other children of similar age • If it is a child explain risks to the wellbeing of the family members/carers • explain risks to your wellbeing from your reliance on the support of family members/carers/informal networks/community, including how this may reduce your independence • relate the above to factors specific to your age/capacity/intensity and type of support/culture/gender and any other relevant considerations • Explain risks of the long term wellbeing of any family members/carers |
| Other Systems | <p>Ensure supports for other systems have been explored</p> <ul style="list-style-type: none"> • Health, Mental Health, Child protection and family support, Early childhood development, School education, Higher education and vocational education and training, Employment, Housing and community infrastructure, Transport, Justice • For more information see: COAG PRINCIPLES TO DETERMINE THE RESPONSIBILITIES OF THE NDIS AND OTHER SERVICE SYSTEMS (however the COAG Principles can be challenged (Burchell Decision) and NDIS Rules Schedule 1 (7.1- 7.25)) • Show evidence of other systems that have been explored: eg. <i>Letter which reports health system will not fund an item/service if someone has an NDIS plan</i> • See recent update of NDIS and Health interface: Department of Social Services Link |

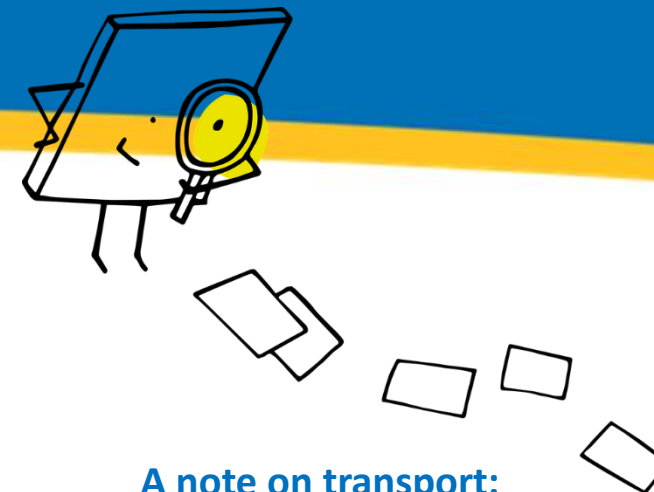


7. EVIDENCE TIPS

1. Indicate clearly what is being requested and what the funds will be used for – ideally with supporting evidence
2. Remember the request will be reviewed by someone who has never met you!
3. Explain how the supports are solely and directly related to disability support needs AND/OR if the cost is ancillary to another support funded that you would not otherwise incur.

eg. Transport funding to attend day program (note: transport will still need to meet the reasonable and necessary requirements and evidence of a substantial difficulty catching public transport)

- If you need support seek assistance from someone you trust – eg. Support Coordinator, LAC/ECEI support person, social worker, advocate etc.
- If reasonable and necessary: supports should be fully funded (not partially funded) – **McGarrigle Federal Court Decision**



7. EVIDENCE TIPS

Eg. Transport Schedule – David Decision

| Activity | Trips per year | Cost per return trip | Annually |
|---|----------------|----------------------|--------------------|
| Work 2 days per week • Based on 5 months work per year | 40 | \$80.00 | \$3,200.00 |
| Sports matches in Croydon once a month • Based on 11 months per year | 11 | \$80.00 | \$880.00 |
| VEWSA meetings | 10 | \$90.00 | \$900.00 |
| Visiting father in Sunbury approximately once a month | 10 | \$110.00 | \$1,100.00 |
| Sports training in Nunawading or visiting friends approximately once a week | 48 | \$80.00 | \$3,840.00 |
| Hospital appointments and volunteer events approximately once per week | 40 | \$60.00 | \$2,400.00 |
| Total | 159 | | \$12,320.00 |

- Transport Schedule
- Support Worker schedule
- Incident Reports
- Reports/statements from past/current support services
- Make Freedom of Information Requests
- Request longer appointments with health professionals
- Lived Experience Statement and/or carer's impact statement
- Pre-planning resources
- Read NDIS Booklets & resources

A note on transport:

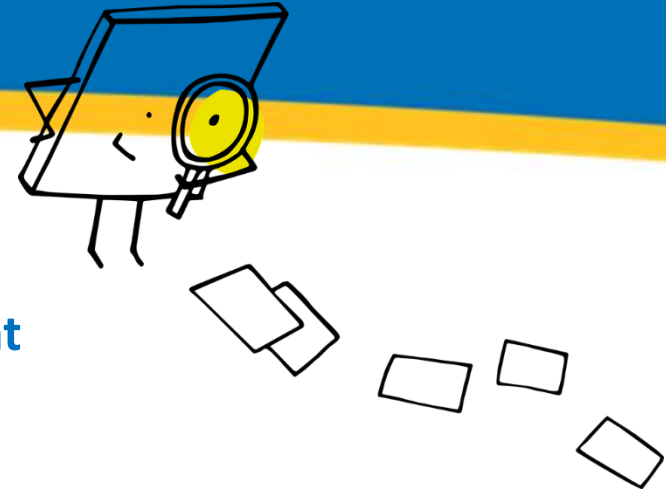
Ewin Decision

- Funding for transport is an individualised decision
- Concerns from the AAT about the NDIA's 3 Level Guidelines.
- Planners must take into account the circumstances of the individual, including the specific reason for each journey, the availability of informal support, community expectations about reliance on informal support, access to public transport, safety of its use and time or context specific obstacles to its use, such as rain, or need to carry heavy equipment.

7. EVIDENCE TIPS

Lived Experience Statement and/or carer's impact statement

- A statement from you (the participant) and family or carer (see our template)
- Explain your story to the NDIA
- Include risk factors to you and your informal supports
- What do you want the NDIA to know about why you need the support requested?
- Share as much as you are comfortable with and ask for assistance from a support person if needed (this can be a difficult process – it is okay to seek assistance!)
- The statements are helpful if the matter goes to the AAT for an appeal. AAT Decisions and The NDIS Act highlights the importance of family/carers and the impact of carer burnout – **PNFK & LNMT** Decisions
- Everyone has different circumstances which the NDIA needs to be aware of



8. EXTERNAL REVIEW APPEAL



- You have **28 days** from receiving the Internal Review outcome to appeal to the Administrative Appeals Tribunal (AAT)
- AAT Website <http://www.aat.gov.au/apply-online/frequent-users>
- You can seek support - this process can be lengthy & intrusive – RIAC/other funded Advocacy services can guarantee support
- RIAC can also apply for Victoria Legal Aid funding for assistance (this has limitations)

9. PLAN REVIEW REQUESTS S.48

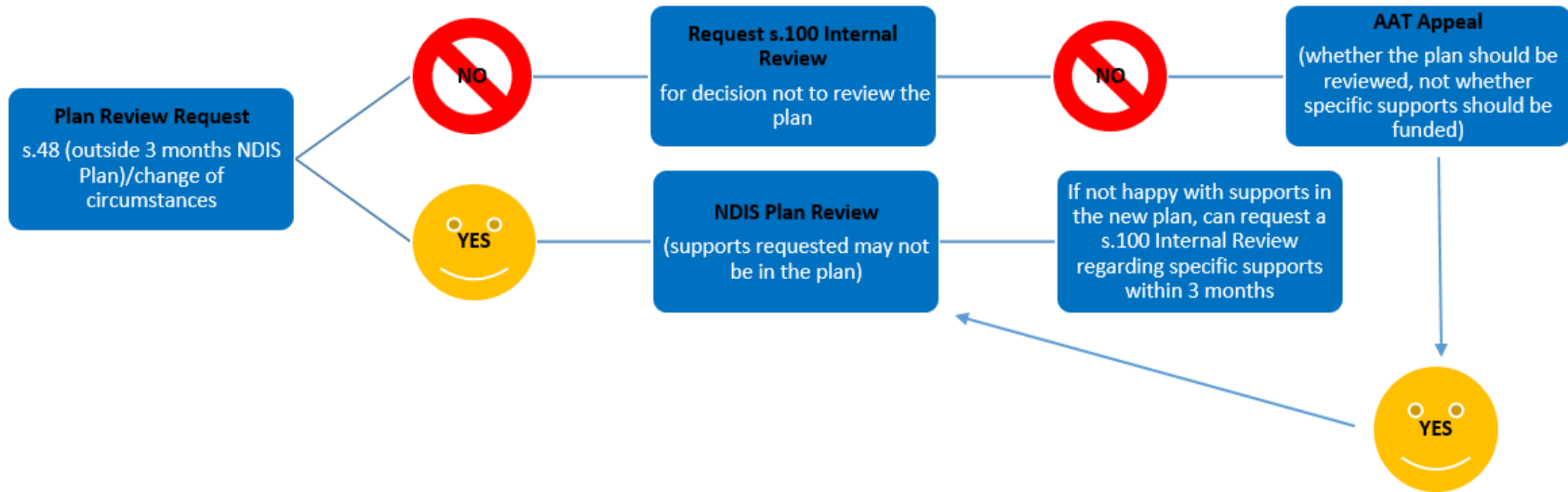
- Make request at any time during an NDIS Plan
- Demonstrate evidence of change of circumstances to show current funding levels are no longer appropriate
- Time limit – NDIA has 14 days to respond
- If Plan Review request is rejected or you don't hear from the NDIA within 14 days you can appeal with an Internal Review application.

Note – this relates to the NDIA's decision not to review the plan overall (not the specific supports requested)

- It is better to submit an Internal Review rather than a Plan Review if you are within the 3 months time limit
- ***DO NOT*** withdraw the Internal Review if requested by the NDIA until you are happy with the plan outcome!



9. PLAN REVIEW REQUESTS S.48



10. COMPLAINTS

Complaints can help to:

1. Prioritise internal review applications for individual participants
2. Alert systemic issues to bring about change within the NDIA

Complaints about NDIA:

1. NDIA must attempt to resolve within 21 days of receiving your complaint
2. You can complain to the Commonwealth Ombudsman if the NDIA does not respond to your complaint within 21 days or you are not satisfied with the outcome
3. Local Member of Parliament – contact at any time to explain your concerns with the NDIS
4. Media (can be powerful but this is a personal preference)

TIP - Keep written records of all conversations and keep all of your paperwork!

Where to go with a complaint

| | | |
|---|-----------------------|----------------|
| I'm not happy with NDIS funded services | ➔ The NDIS Commission | ➔ 1800 035 544 |
|---|-----------------------|----------------|

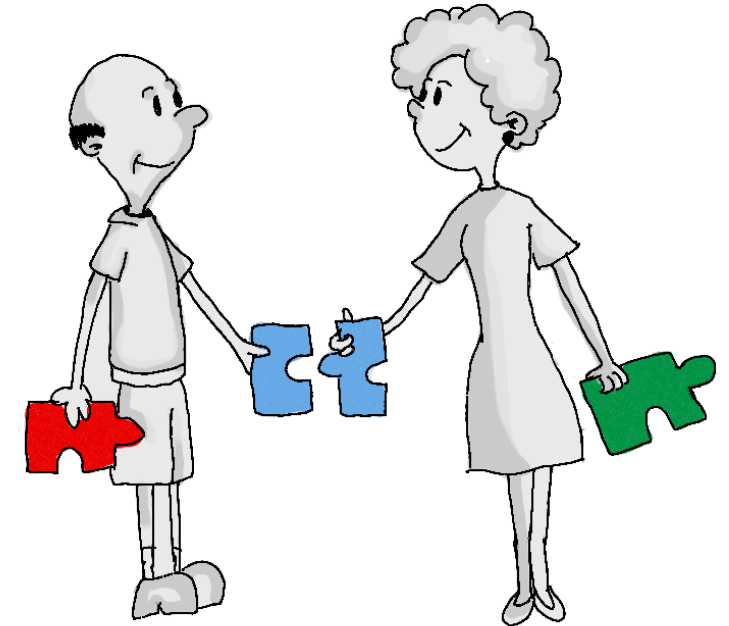
| | | |
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| I'm not happy with the NDIA's actions or decisions | ➔ NDIA or Commonwealth Ombudsman | ➔ 1800 800 110 www.ndis.gov.au www.ombudsman.gov.au |
|--|----------------------------------|--|

| | | |
|---|---|---|
| I'm not happy with a service provided by another agency or body | ➔ Your state or territory complaints body | ➔ Find links on the NDIS Commission website www.ndiscommission.gov.au |
|---|---|---|

11. HOW CAN RIAC ASSIST?

We are here to support!

- Providing template letters and resources – see our website www.riac.org.au
- Workshop resources handouts – on our website [HERE](#)
- Proof reading applications
- Following up delays and crisis escalations with NDIA
- We prioritise according to risk factors and application time limits
- Administrative Appeals Tribunal (AAT) appeals (no waiting period)
- Assist to apply for free legal assistance/advice



CONTACT RIAC

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Email Advice or Information: advocacyinfo@riac.org.au

Email Referrals: referrals@riac.org.au

Website: <https://riac.org.au/>

Facebook: <https://www.facebook.com/RightsInformationandAdvocacyCentre/>

Peer Support Groups/Workshops: keep up to date with our upcoming events on Facebook



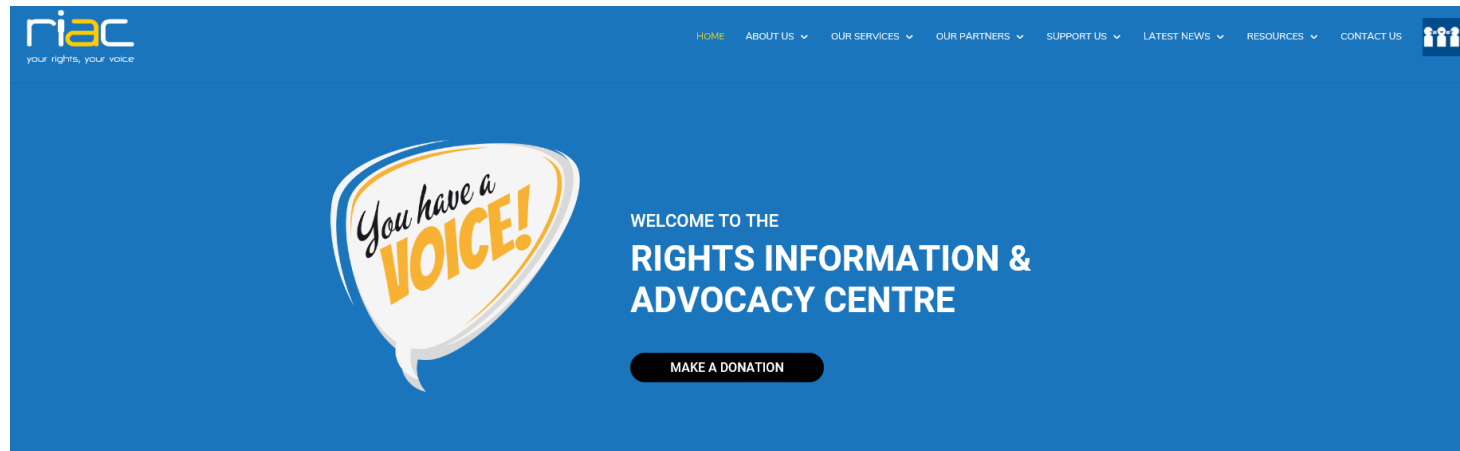
QUESTIONS?



**Please take a moment to complete our workshop survey
as your feedback is appreciated – Thank you!**

WHERE CAN YOU FIND OUR RESOURCES?

Go to www.riac.org.au and click



NDIS INTERNAL REVIEW WORKSHOP HANDOUTS

Please find our NDIS Internal Review Workshop Handouts

[Click Here to View](#)